

FUNCTION OF THE COURT

My function is to conduct this trial in an orderly, fair, and efficient manner; to rule on questions of law; and to instruct you on the law that applies in this case.

It is your duty to accept the law as I instruct you. You should consider all the instructions as a whole. You may not ignore or refuse to follow any of them.

FURNISHING THE JURY WITH A COPY OF THE INSTRUCTIONS

I will provide you with a copy of my instructions. During your deliberations, you may, if you want, refer to these instructions. While you may refer to any particular portion of the instructions, you are to consider the instructions as a whole and you may not follow some and ignore others. If you have any questions about the instructions, you should feel free to send me a note. Please return your instructions to me when your verdict is rendered.

FUNCTION OF THE JURY

Your function, as the jury, is to determine what the facts are in this case. You are the sole judges of the facts. While it is my responsibility to decide what is admitted as evidence during the trial, you alone decide what weight, if any, to give to that evidence. You alone decide the credibility or believability of the witnesses.

You should determine the facts without prejudice, fear, sympathy, or favoritism. You should not be improperly influenced by anyone's race, ethnic origin, or gender. Decide the case solely from a fair consideration of the evidence.

You may not take anything I may have said or done as indicating how I think you should decide this case. If you believe that I have expressed or indicated any such opinion, you should ignore it. The verdict in this case is your sole and exclusive responsibility.

JURY'S RECOLLECTION CONTROLS

If any reference by me or the attorneys to the evidence is different from your own memory of the evidence, it is your memory that should control during your deliberations.

NOTETAKING BY JURORS

During the trial, I have permitted those jurors who wanted to do so to take notes. You may take your notebooks with you to the jury room and use them during your deliberations if you wish. As I told you at the beginning of the trial, your notes are only to be an aid to your memory. They are not evidence in the case, and they should not replace your own memory of the evidence. Those jurors who have not taken notes should rely on their own memory of the evidence. The notes are intended to be for the notetaker's own personal use.

EVIDENCE IN THE CASE

During your deliberations, you may consider only the evidence properly admitted in this trial. The evidence in this case consists of the sworn testimony of the witnesses, the exhibits that were admitted into evidence, and the facts and testimony stipulated to by the parties.

During the trial, you were told that the parties had stipulated – that is, agreed – to certain facts. You should consider any stipulation of fact to be undisputed evidence.

When you consider the evidence, you are permitted to draw, from the facts that you find have been proven, such reasonable inferences as you feel are justified in the light of your experience. You should give any evidence such weight as in your judgment it is fairly entitled to receive.

STATEMENTS OF COUNSEL

The statements and arguments of the lawyers are not evidence. They are only intended to assist you in understanding the evidence. Similarly, the questions of the lawyers are not evidence.

INDICTMENT NOT EVIDENCE

The indictment is merely the formal way of accusing a person of a crime. You must not consider the indictment as evidence of any kind – you may not consider it as any evidence of Mr. Craig's guilt or draw any inference of guilt from it.

INADMISSIBLE AND STRICKEN EVIDENCE

The lawyers in this case sometimes objected when the other side asked a question, made an argument, or offered evidence that the objecting lawyer believed was not proper. You must not hold such objections against the lawyer who made them or the party s/he represents. It is the lawyers' responsibility to object to evidence that they believe is not admissible.

If, during the course of the trial, I sustained an objection to a lawyer's question, you should ignore the question, and you must not speculate as to what the answer would have been.

If, after a witness answered a question, I ruled that the answer should be stricken, you should ignore both the question and the answer and they should play no part in your deliberations.

REDACTED DOCUMENTS

During the course of this trial, a number of exhibits were admitted in evidence. Sometimes only those parts of an exhibit that are relevant to your deliberations were admitted. Where this has occurred, I have required the irrelevant parts of the statement to be blacked out or deleted. Thus, as you examine the exhibits, and you see or hear a statement where there appear to be omissions, you should consider only the portions that were admitted. You should not guess as to what has been taken out.

BURDEN OF PROOF – PRESUMPTION OF INNOCENCE

Every defendant in a criminal case is presumed to be innocent. This presumption of innocence remains with the defendant throughout the trial unless and until the government has proven s/he is guilty beyond a reasonable doubt. This burden never shifts throughout the trial. The law does not require Mr. Craig to prove his/her innocence or to produce any evidence at all. If you find that the government has proven beyond a reasonable doubt every element of the offense with which Mr. Craig is charged, it is your duty to find him/her guilty. On the other hand, if you find the government has failed to prove any element of the offense beyond a reasonable doubt, it is your duty to find Mr. Craig not guilty.

REASONABLE DOUBT

The government has the burden of proving Mr. Craig guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not, or, in some cases, that its truth is highly probable. In criminal cases such as this one, the government's proof must be more powerful than that. It must be beyond a reasonable doubt. Reasonable doubt, as the name implies, is a doubt based on reason – a doubt for which you have a reason based upon the evidence or lack of evidence in the case. If, after careful, honest, and impartial consideration of all the evidence, you cannot say that you are firmly convinced of the defendant's guilt, then you have a reasonable doubt.

Reasonable doubt is the kind of doubt that would cause a reasonable person, after careful and thoughtful reflection, to hesitate to act in the graver or more important matters in life. However, it is not an imaginary doubt, nor a doubt based on speculation or guesswork; it is a doubt based on reason. The government is not required to prove guilt beyond all doubt, or to a mathematical or scientific certainty. Its burden is to prove guilt beyond a reasonable doubt.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence from which you may determine what the facts are in this case – direct evidence and circumstantial evidence. When a witness, such as an eyewitness, asserts actual knowledge of a fact, that witness's testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is circumstantial evidence.

Let me give you an example. Assume a person looked out a window and saw that snow was falling. If he later testified in court about what he had seen, his testimony would be direct

evidence that snow was falling at the time he saw it happen. Assume, however, that he looked out a window and saw no snow on the ground, and then went to sleep and saw snow on the ground after he woke up. His testimony about what he had seen would be circumstantial evidence that it had snowed while he was asleep.

The law says that both direct and circumstantial evidence are acceptable as a means of proving a fact. The law does not favor one form of evidence over another. It is for you to decide how much weight to give to any particular evidence, whether it is direct or circumstantial. You are permitted to give equal weight to both. Circumstantial evidence does not require a greater degree of certainty than direct evidence. In reaching a verdict in this case, you should consider all of the evidence presented, both direct and circumstantial.

CREDIBILITY OF WITNESSES

In determining whether the government has proved the charges against the defendant beyond a reasonable doubt, you must consider the testimony of all the witnesses who have testified.

You are the sole judges of the credibility of the witnesses. You alone determine whether to believe any witness and the extent to which a witness should be believed. Judging a witness's credibility means evaluating whether the witness has testified truthfully and also whether the witness accurately observed, recalled, and described the matters about which the witness testified.

You may consider anything that in your judgment affects the credibility of any witness. For example, you may consider the demeanor and the behavior of the witness on the witness stand; the witness's manner of testifying; whether the witness impresses you as a truthful person;

whether the witness impresses you as having an accurate memory and recollection; whether the witness has any motive for not telling the truth; whether the witness had a full opportunity to observe the matters about which he or she has testified; whether the witness has any interest in the outcome of this case, or friendship or hostility toward other people concerned with this case.

In evaluating the accuracy of a witness's memory, you may consider the circumstances surrounding the event, including any circumstances that would impair or improve the witness's ability to remember the event, the time that elapsed between the event and any later recollections of the event, and the circumstances under which the witness was asked to recall details of the event.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or transaction may see or hear it differently; an innocent misrecollection, like a failure of recollection, is not an uncommon experience. In weighing the effect of the inconsistency or discrepancy, always consider whether it pertains to a matter of important or unimportant detail, and whether the inconsistency or discrepancy results from innocent error or intentional falsehood.

You may consider the reasonableness or unreasonableness, the probability or improbability, of the testimony of a witness in determining whether to accept it as true and accurate. You may consider whether the witness has been contradicted or supported by other evidence that you credit.

If you believe that any witness has shown him or herself to be biased or prejudiced, for or against either side in this trial, you may consider and determine whether such bias or prejudice

has colored the testimony of the witness so as to affect the desire and capability of that witness to tell the truth.

You should give the testimony of each witness such weight as in your judgment it is fairly entitled to receive.

WITNESS WITH A PLEA AGREEMENT

You have heard that Richard Gates entered into a plea agreement with the government pursuant to which Mr. Gates agreed to testify truthfully in this case and the government agreed to dismiss charges against him and bring Mr. Gates's cooperation to the attention of his sentencing judge and consider filing papers with his judge so that the judge considers imposing a more lenient sentence than that judge might otherwise impose.

The government is permitted to enter into this kind of plea agreement. You, in turn, may accept the testimony of such a witness and consider it along with all of the other evidence in determining whether the government has proved the defendant's guilt beyond a reasonable doubt. You may consider all of the factors I just listed that would apply when considering the credibility of any witness. A witness who has entered into a plea agreement is under the same obligation to tell the truth under penalty of perjury as any other witness.

However, you may consider whether a witness who has entered into such an agreement has an interest different from other types of witnesses. You may consider whether the plea agreement the witness entered into with the government has motivated him to testify falsely against the defendant. The testimony of a witness who has entered into a plea agreement should be considered with caution. You should therefore give the testimony as much weight as in your judgment it deserves.

DEFENDANT AS WITNESS

A defendant in a criminal case has an absolute right not to testify, or to testify in his own defense. His testimony should not be believed or disbelieved merely because he is a defendant. In evaluating his testimony, however, you may consider the fact that the defendant has a vital interest in the outcome of this trial. As with the testimony of any other witness, you should give the defendant's testimony as much weight as in your judgement it deserves.

CHARACTER OF DEFENDANT

Gregory Craig has introduced testimony from witnesses that in their opinion, he is truthful, honest, and law-abiding, and there was evidence from some witnesses that he has a good reputation in the community for truthfulness and honesty. Such evidence may indicate to you that it is unlikely that a truthful and honest person would commit the crime charged or it may not. You may consider this evidence along with other evidence in the case including evidence that contradicts Mr. Craig's character evidence and give it as much weight as you think it deserves.

Notwithstanding the evidence of character, if, after weighing all the evidence, you are convinced beyond a reasonable doubt that Mr. Craig is guilty of the crime charged, it is your duty to find him guilty. On the other hand, evidence of good character alone may create a reasonable doubt as to a defendant's guilt, although without it the other evidence would be convincing.

“ON OR ABOUT” – PROOF OF

The indictment charges that the offense of unlawfully, knowingly and willfully falsifying, concealing and covering up by a trick, scheme, and device material facts in a matter within the jurisdiction of the FARA Unit was committed “on or about” June 3, 2013 through January 16, 2014. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

THE ELEMENTS OF THE OFFENSE

Nature of the Offense

The indictment charges that from June 3, 2013 to January 16, 2014, within the District of Columbia and elsewhere, the defendant, knowingly and willfully, falsified, concealed, or covered up, by a trick, scheme, or device, material facts within the jurisdiction of the FARA Unit.

Elements of the Offense Charged

The defendant can be found guilty of this crime only if the government has proven all of the following elements beyond a reasonable doubt:

- 1) That on at least one occasion after October 3, 2013;
- 2) The defendant concealed or covered up a fact that he had a legal duty to disclose;
- 3) That the fact was material;
- 4) The defendant concealed or covered up the fact by using a trick, scheme, or device;

- 5) The defendant acted knowingly and willfully; and
- 6) The defendant concealed or covered up a material fact in a matter within the jurisdiction of the executive branch of the United States.

I will now describe each of these elements in more detail.

With respect to the second element, the concealment of something the defendant had a duty to disclose, a person has a duty to disclose if and when he responds to specific questions posed by the government about a particular topic that is the subject of a statute, regulation or government form.

It is important to understand that if individuals or organizations receive inquiries or questions from the FARA Unit, they do not have any duty to respond to those inquiries at all.

And I am further instructing you that if they decide to answer the questions, they do not have a duty to volunteer or offer information that was not called for.

In other words, you cannot find that someone concealed information in violation of a duty to disclose it if he was merely silent, or for a mere failure to volunteer information, or a failure to answer questions that were not asked.

But if a person chooses to respond to a specific question about a particular topic, he has a legal duty to be truthful in his responses about that topic, and he has a duty not to omit facts that leave his answers false or misleading in their absence.

Also, if a person chooses to undertake to persuade the government to make or change a particular determination, he cannot make statements designed to deceive or mislead the decision makers.

For the third element, that the fact was material, you are instructed that a fact is “material” if it has the natural tendency to influence or is capable of influencing a decision of the

agency or decision-making body to which it is addressed – in this case, the FARA Unit. The government is not required to prove that the statement actually influenced the actions of the FARA Unit, and the question is not whether any particular person was influenced. The question is whether the concealment of the fact had a natural tendency to or was capable of influencing a decision by a reasonable decision-maker acting on behalf of the FARA Unit. You are further instructed that you must all agree on which material fact was concealed; that is, you may have different opinions as to some, but you must all agree as to at least one.

To prove the fourth element, a “scheme, trick or device,” the government must show that the defendant engaged in an affirmative act to conceal the material fact or facts. You must find that the defendant took an affirmative step to conceal: making false or deliberately misleading statements, omitting facts needed to make a statement not misleading, and other acts of concealment can be affirmative acts. But one false statement alone is not enough to constitute a “scheme,” and mere passive failure to file a form or to volunteer information is not a “scheme.”

This requirement of an affirmative act brings me back to the first element I listed, that you must unanimously find that the defendant engaged in an affirmative act of concealment “on at least one occasion after October 3, 2013.”

For the fifth element, a defendant acts “knowingly” if he acts knowing that a statement was false, fictitious, or fraudulent. To prove that the defendant acted willfully, the government must prove that he acted with the knowledge that his conduct was unlawful.

And sixth, a matter is within the jurisdiction of the executive branch of the United States if the FARA Unit has the power to exercise authority in that matter.

The Foreign Agents Registration Act

The defendant is not charged in this case with violating any provision of the FARA statute, and you are not being asked to decide whether he did or did not have to register as a foreign agent based on the facts you have heard in this case. The question is whether he knowingly and willfully concealed or covered up material facts by a trick or scheme in his communications with the FARA Unit on that subject. But some understanding of what the statute involves may bear upon your determination of what facts were material, and so I will explain it to you now.

You are hereby instructed that the Foreign Agents Registration Act provides that a person who acts as “an agent of a foreign principal” must file a public registration statement that includes certain disclosures.

The Ministry of Justice of Ukraine is a “foreign principal.”

The FARA definition of an “agent of a foreign principal” includes any person who acts as an agent or representative, or acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of any person whose activities are supervised, directed, controlled, or financed by a foreign principal;

and who either engages within the United States in “political activities” for or in the interests of the foreign principal;

or acts within the United States as a “public relations counsel, publicity agent, or information-service employee” for or in the interests of such foreign principal.

The term “political activities” means any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States.

The term “public-relations counsel” includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal; and

The term “publicity agent” includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise.

The term “information-service employee” includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, or information.

The statute does not cover political or public relations activity not within the United States or directed towards the United States, or that is intended to influence an official of another country.

It is not against the law to be an agent of a foreign principal or to engage in these activities; what the statute provides is that one who acts as an agent of a foreign principal must register.

PROOF OF STATE OF MIND

Someone’s intent or knowledge ordinarily cannot be proved directly, because there is no way of knowing what a person is actually thinking, but you may infer someone’s intent or knowledge from the surrounding circumstances. You may consider any statement made or acts done or committed by Gregory Craig, and all other facts and circumstances received in evidence, which indicate his intent or knowledge.

You may infer, but are not required to infer, that a person intends the natural and probable consequences of acts he intentionally did or intentionally did not do. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial. You should consider all the circumstances in evidence that you think are relevant in determining whether the government has proved beyond a reasonable doubt that Mr. Craig acted with the necessary state of mind.

GOOD FAITH

A defendant does not act willfully if he believes in good faith that his actions comply with the law – meaning in this case, that he harbored a good faith belief that he was not acting to conceal and cover up a material fact or facts from the FARA Unit – even if you find that the belief was unreasonable. A good faith belief is one that is honestly and genuinely held. However, you may consider the reasonableness of the defendant’s belief together with all of the other evidence to determine whether the defendant held the belief in good faith. If you have a reasonable doubt that Mr. Craig knew that his conduct was unlawful, then you must find Mr. Craig not guilty.

POSSIBLE PUNISHMENT NOT RELEVANT

The question of possible punishment of the defendant in the event a conviction is not a concern of yours and should not enter into or influence your deliberations in any way. The duty of imposing sentence in the event of a conviction rests exclusively with me. Your verdict should be based solely on the evidence in this case, and you should not consider the matter of punishment at all.

UNANIMITY – GENERAL

A verdict must represent the considered judgment of each juror, and in order to return a verdict, each juror must agree on the verdict. In other words, your verdicts must be unanimous.

VERDICT FORM EXPLANATION

You will be provided with a Verdict Form for use when you have concluded your deliberations. The form is not evidence in this case, and nothing in it should be taken to suggest or convey any opinion by me as to what the verdict should be. Nothing in the form replaces the instructions of law I have already given you, and nothing in it replaces or modifies the instructions about the elements which the government must prove beyond a reasonable doubt. The form is meant only to assist you in recording your verdict.

EXHIBITS DURING DELIBERATIONS

I will be sending into the jury room with you the exhibits that have been admitted into evidence. You may examine any or all of them as you consider your verdict(s). Please keep in mind that exhibits that were only marked for identification but were not admitted into evidence will not be given to you to examine or consider in reaching your verdict.

SELECTION OF FOREPERSON

When you return to the jury room, you should first select a foreperson to preside over your deliberations and to be your spokesperson here in court. There are no specific rules regarding how you should select a foreperson. That is up to you. However, as you go about

the task, be mindful of your mission – to reach a fair and just verdict based on the evidence. Consider selecting a foreperson who will be able to facilitate your discussions, who can help you organize the evidence, who will encourage civility and mutual respect among all of you, who will invite each juror to speak up regarding his or her views about the evidence, and who will promote a full and fair consideration of that evidence.

**CAUTIONARY INSTRUCTION ON
PUBLICITY, COMMUNICATION AND RESEARCH**

I would like to remind you that, in some cases, although not necessarily this one, there may be reports in the newspaper or on the radio, internet, or television concerning this case. If there should be such media coverage in this case, you may be tempted to read, listen to, or watch it. You must not read, listen to, or watch such reports because you must decide this case solely on the evidence presented in this courtroom. If any publicity about this trial inadvertently comes to your attention, do not discuss it with other jurors or anyone else. Just let me or my clerk know as soon after it happens as you can, and I will then briefly discuss it with you.

As you retire to the jury room to deliberate, I also wish to remind you of an instruction I gave you at the beginning of the trial. During deliberations, you may not communicate with anyone not on the jury about this case. This includes any electronic communication such as email or text or any blogging about the case. In addition, you may not conduct any independent investigation during deliberations. This means you may not conduct any research in person or electronically via the internet or in another way.

**COMMUNICATIONS BETWEEN COURT AND JURY
DURING JURY'S DELIBERATIONS**

If it becomes necessary during your deliberations to communicate with me, you may send a note by the clerk or marshal, signed by your foreperson or by one or more members of the jury. No member of the jury should try to communicate with me except by such a signed note, and I will never communicate with any member of the jury on any matter concerning the merits of this case, except in writing or orally here in open court.

Bear in mind also that you are never, under any circumstances, to reveal to any person – not the clerk, the marshal or me – how jurors are voting until after you have reached a unanimous verdict. This means that you should never tell me, in writing or in open court, how the jury is divided on any matter – for example, 6-6 or 7-5 or 11-1, or in any other fashion – whether the vote is for conviction or acquittal or on any other issue in the case.

EXCUSING ALTERNATE JURORS

The last thing I must do before you begin your deliberations is to excuse the alternate jurors. As I told you before, the selection of alternates was an entirely random process; it's nothing personal. We selected two seats to be the alternate seats before any of you entered the courtroom. Since the rest of you have remained healthy and attentive, I can now excuse those jurors in seats ____ and ____.

Before you two leave, I am going to ask you to tear out a page from your notebook, and to write down your name and daytime phone number and hand this to the clerk. I do this because it is possible, though unlikely, that we will need to summon you back to rejoin the jury in case something happens to a regular juror. Since that possibility exists, I am also going to

instruct you not to discuss the case with anyone until we call you. My earlier instruction on use of the Internet still applies; do not research this case or communicate about it on the Internet. In all likelihood, we will be calling you to tell you there has been a verdict and you are now free to discuss the case; there is, however, the small chance that we will need to bring you back on to the jury. Thank you very much for your service, and please report back to the jury office to turn in your badge on your way out.
